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SUPREME COURT, U.S.
FILED
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No.
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IN THE

Supreme Court of the United States

October Term, 1997

MICHAEL F. CASEY,

PETITIONER

v.

STATE OF FLORIDA,

RESPONDENT

On Petition For Writ of Certiorari To The Circuit Court of Florida, Palm Beach County

PETITION FOR WRIT OF CERTIORARI

Michael F. Casey Pro Se
131 Randolph Court
Lake Worth, Florida 33461
561-547-1772 (O)
561-965-2699 (H)

34 pp

STATEMENT OF QUESTIONS

1. When a D.U.I. arrestee is brought to a testing facility and placed on video camera in a room set up to record physical sobriety tests, is it bad faith for the police to refuse the arrestee's request to perform the physical sobriety tests on the running camera?

2. Is a defendant's right to a fair trial hindered by a trial court's denial of his constitutional and statutory right to bail pending trial?

3.In a D.U.I. case involving no traffic accident, no traffic violation, no breath results, a video tape showing no impairment, a failure to produce the arresting officer at trial, a denial of the defendant's request to perform tests on camera and an officer's testimony indicating

no impairment, is the testimony of police officers alone legally sufficient for conviction?

4.Can a non-criminal traffic infraction in another state be considered a substantially similar and a prior offense to a criminal D.U.I. conviction?

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STATEMENT OF JURISDICTION

1.Petitioner was convicted in the Palm Beach, Florida, County Court of D.U.I. and driving under suspension on Nov. 27, 1995. Petitioner was sentenced as a second offender. Motion for a new trial on both charges was denied.

2.Appeal was made to the 15th Circuit Court of Appeals. Conviction and sentence were affirmed on Feb. 26, 1997.

3.Petition for Writ of Certiorari was made to the Fourth District Court of Appeals. Petition was denied on June 3, 1997. Order denying rehearing was made on July 11, 1997.

4. Petitioner can appeal no further in Florida courts under state law. Fla. R. App. P. 9.030 (a)

5.This Court has jurisdiction under 28 U.S.C.A. §1257 (a).

STATEMENT OF THE CASE

The Petitioner was stopped by police on May 10, 1995. He was given roadside sobriety tests and placed under arrest for D.U.I. and two moving violations. He was brought to the county sheriff's testing facility. He was placed on video camera in a room set up to record physical sobriety tests. He repeatedly requested to perform the tests on the running camera and the arresting officer refused to allow this. The Petitioner then refused to take a breath test and his driver license was suspended for this refusal. This suspension was appealed to the circuit court. The Petitioner was later issued two citations for driving under an administrative suspension. On Nov. 6, 1995 the county court heard evidence that the Petitioner had

driven under suspension. The Court revoked his bond on the D.U.I. charge and ordered him held in jail without bail until trial.(A-4-12) Trial was held Nov. 27, 1995 and Petitioner was found guilty of driving under suspension despite defense's claim that the suspension's validity was under dispute. The D.U.I. trial followed with the State calling two of the arresting officer's fellow officers and a testing facility technician. The State failed to locate the arresting officer and he was not produced at trial. The Court denied defense's motion in limine to exclude statements made by the arresting officer when he administered the roadside sobriety tests.(T-75-77) The officers testified concerning the Petitioner performance of the roadside tests. One officer admitted

he had gone over the arresting officer's report prior to the trial. The other officer also testified to the Petitioner's driving. The Court then viewed the videotape of the Petitioner walking and talking at the testing facility. The State never contended the tape showed any evidence of impairment and in fact it didn't. The testing facility technician testified that the Petitioner's speech, balance and walking were all fine but he considered him impaired because of glassy eyes and the smell of alcohol. The Court granted defense's motion for judgment of acquittal on the two traffic infractions and denied judgment of acquittal on the D.U.I. Petitioner was found guilty of D.U.I. and sentenced as a second offender. The basis for this was

a previous conviction in New York styled D.W.A.I. This is a noncrimminal traffic infraction.§1192 (1) N.Y. V&T New York has a criminal offense styled D.W.I. §1192 (3) N.Y. V&T Defense timely moved for new trials on both convictions and both were denied.(T-162-164) Petitioner appealed both convictions and sentence to the circuit court. Appeal was based on denial of a fair trial by being illegally held without bail, bad faith on the part of the police, a denial of the chance to confront and cross examine the accuser and test administrator the arresting officer, insufficient evidence and an illegal sentence. Conviction and sentence were affirmed without comment on Feb. 26, 1997.(A-3) Certiorari was sought in the state district court based on the circuit

court's failing to apply essential requirements of law. Certiorari was denied by that court on June 3, 1997 without comment.(A-2) Motion for rehearing based on the district court's apparent failure to examine the record as required under controlling state case law, Miller v. State, App. 1982 411 So.2d 299, was denied on July 11, 1997.(A-1)

ARGUMENT

It is a basic principle of criminal law that the State must act in good faith and this extends to law enforcement. The Court has consistently held this position in cases such as Arizona v. Youngblood, 488 U.S. 51, 109 S. Ct. 333, 102 L.Ed.2d 281 (1988).

The primary evidence introduced at trial, the physical sobriety tests, was the very evidence the Petitioner wanted so desperately to offer the trial court. It is bad enough be to arrested and charged with a crime one isn't guilty of. It is beyond bad faith to then refuse an arrestee's request to provide evidence of his innocence to the fact finder. There being a time factor involved in these tests, the arrestee would never again have that opportunity to show his

innocence and the police knew that. In this case the bad faith reaches a higher significance because the police's testimony as to the tests and their testimony regarding the Petitioner's physical characteristics was the only evidence the State could offer at trial. To make the situation even more unfair, the State could not even locate the officer who administered the tests. The defense was unable to cross examine the man whose determination of the tests led him to arrest the Petitioner.

The holding of the Petitioner was contrary to the U.S. Constitution Article VIII, the Florida Constitution Article I, §14, Florida Statute §907.041, as well as the Florida Rules of Criminal Procedure 3.131. Florida case law holds this right to be absolute. Matera v. Buchanan,

App. 1966, So. 2d. 18. This right to pretrial release is considered fundamental. The state law and rules specifically do not permit denial of the right.(A-14-18) The Petitioner was prevented from researching the case and searching for witnesses in his favor. Additionally, the Petitioner has no civil remedies available against the court for denying his fundamental rights. The sanction of a new trial is all that is possible.

Unfortunately, proof beyond a reasonable doubt is a standard that is often overlooked when it comes to some criminal charges. D.U.I. is just such a charge. It was not to long ago that a case like this would not have even resulted in charges let alone full prosecution and conviction. Proof beyond a

reasonable doubt is the standard and this standard should not vary with the crime charged or the times in which one is tried. The State in this case failed to even approach this standard of proof.

The U.S. Constitution Article IV Section 1 requires that a state honor the official acts of another state. The State of New York in not convicting the Petitioner of the crime of D.W.I.(§1192 (3) N.Y. V&T) has said that he is not legally guilty of that crime. The Court in this case concluded that a non-criminal traffic violation D.W.A.I.(§1192 (1) N.Y.V&T.) was "substantially similar" to the Florida criminal act of D.U.I. There is a substantial difference in being convicted of crime and being convicted of a traffic violation. Even if the elements were

similar, which they are not in this case, it cannot be said the Petitioner would have been put on notice that for all practical purposes he had been convicted of criminal D.U.I.

The issues in this case involve the most basic constitutional rights. The Petitioner's rights were denied from the time he was arrested on through every step of the legal process including sentencing. The appellate courts failed in their responsibility to apply the law and the Petitioner is forced to bring the case before this Court.

Respectfully submitted,

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APPENDIX

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

MICHAEL F. CASEY

Petitioner(s),

vs.

STATE OF FLORIDA

Respondent(s).

CASE NO. 97-01078

L.T. CASE NO. 96-18 ACA02
PALM BEACH

July 11, 1997

BY ORDER OF THE COURT:

ORDERED that petitioner's motion filed June 18, 1997, for rehearing is hereby denied.

I hereby certify the foregoing is a true copy of the original court order.

MARILYN BEUTTENMULLER
CLERK

cc: Michael F. Casey
Attorney General-W. Palm Beach
State Attorney 15

/CH

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315, WEST PALM BEACH, FL 33402

MICHAEL F. CASEY

Petitioner(s),

vs.

STATE OF FLORIDA

Respondent(s).

CASE NO. 97-01078

L.T. CASE NO. 96-18 ACA02
PALM BEACH

June 3, 1997

BY ORDER OF THE COURT:

ORDERED that the Petition for Writ of Certiorari filed March 31, 1997, is hereby denied.

I hereby certify the foregoing is a true copy of the original court order.

MARILYN BEUTTENMULLER
CLERK

cc: Michael F. Casey
Attorney General-W. Palm Beach
State Attorney 15

/DM

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL)
CIRCUIT COURT NO: 96-18 AC A02

MICHAEL F. CASEY,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

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CLERK

Decision filed February 26, 1997.

Appeal from the County Court
for Palm Beach County;
Barry M. Cohen, Judge.

Michael F. Casey, Pro Se Appellant.

Barry Krischer, State Attorney,
and Jack Fuchs, Assistant State
Attorney, West Palm Beach,
for Appellee.

PER CURIAM.

AFFIRMED.

COLTON, GARRISON and PHILLIPS, JJ., concur.

Palm Beach County Court
State v. Casey Case #s
95-27006TC-A04
95-15566TC-A04

THE COURT: Okay. First, the Court has a very healthy respect for the presumption of pretrial release. As Mr. Dedell points out, the constitution, the rules of criminal procedure and the legislature jointly agree that as a general rule the two situations in which somebody can be held no bond are, one, they're charged with a capital offense, or, two they're charged with a life felony where the proof of -- where the presumption is -- the proof is evident and the presumption is great, the standard of proof that has been held to be greater than beyond a reasonable doubt.

The Court has also been critical in the past of maintaining no bond statuses on people arrested for offenses such as domestic violence, not for the initially twenty-four

hour period, but where there's no showing after the initial arrest that a reasonable bail shouldn't be set.

The Court also has never hesitated to express its own philosophy that the monetary bail system is inherently discriminatory towards the poor, and often towards minorities, because it sometimes permits rich people to be free and poor people to be incarcerated based on economic factors.

The Court has also not been hesitant to resist the temptation to increase or set monetary bail for the purpose of insuring somebody is held in jail because the Court finds that's dishonest where it's clear somebody will appear in court and does not constitute a danger to the public.

That having been said, and although having done it only on rare occasions, the undisputed evidence before the Court is that notwithstanding the fact that the Defendant is presumed innocent of the D.U.I. charge for which he was initially arrested, that thereafter the Court has already heard evidence that on two seperate dates, seperated by a significant period of time, that the Defendant was driving.

In one instance, whether the Defendant was more or less at fault, it almost resulted in an accident. In the more latter incident, the Court finds the testimony of this police officer to be extremely credible, that there's nothing that I don't believe verbatim.

And it seems to me that the Defendant admitted, and it was ID'd

by this officer, that for a second time driving, not to take a sick mother to the doctor, not to go to work, but literally was driving a second time despite clearly knowing that his license had been suspended, flagrantly in disregard for the law and any respect for the courts or our set of laws, as evinced by the fact that he already had one stop for DUS after the original DUI arrest, and while it's clear that there was not probable cause to believe the Defendant was impaired, it is almost an insult that the reason why the Defendant was driving was to drive home from a bar.

Now, I'm not here to rule on whether somebody is using common sense or not, but it seems to me that although Mr. Dedell is right, that it is not uncommon for people

charged with felonies to be roaming the streets for years before their case is to go to trial, it also seems to me that a large percentage of felony cases are victimless crimes.

For example, drug traffickers who themselves may be, quote, mules, who are arrested one time, are routinely held on bonds of a hundred to a hundred fifty thousand dollars, probably constituting less of a threat than a first-time DUI offender.

The Court does the following, and the Court has given this considerable thought.

The Court at this time grants Defendant's (sic) motion to revoke the Defendant's OR release in both of the cases pending here, and the Court sets no bond at this time.

The Court does direct defense counsel to contact the sheriff's

office and to explain what happened here in court today, giving his name, date of birth, and all relevant information.

Without guaranteeing I would do it, if the sheriff's office indicates that they would accept the Defendant on in-house arrest pretrial, the Court will consider releasing the Defendant on in-house arrest. That is not a guarantee, I would consider it.

Now, I emphasize that I feel that Mr. Dedell has done his job, that the Defendant is not charged with first-degree murder, that he is presumed innocent of all cases pending, but -- and I need to emphasize that although there is a heavy emphasis on drunk driving cases now, I have made it clear in every trial I've ever tried, that

I believe in the presumption of innocence, that just because you're arrested doesn't make you guilty.

But the crime of driving under the influence is inherently a dangerous offense which may be more dangerous than many felonies. That, second, if a Defendant thereafter, while suspended for a DUI incident, drives -- gets arrested and charged, and then does it again, and is driving for the purpose of driving home from a bar, that this Court does conclude at this time, without prejudice to look at other alternatives, that there are, to quote the rules of criminal procedure, no reasonable conditions of release that can guarantee the public safety.

This has nothing to do with guaranteeing the Defendant's appearance in court. So in the sense

that the Court -- if it's abusing its discretion and relief is sought in the circuit court, I want to make it easy for the defense to this regard, that I'm saying for the record the State cannot make the frivolous argument, and I'm not saying you ever would, that the Defendant won't show up in court because he's appeared at every time he's supposed to.

A I'm making a factual finding that my reasoning is not that, excuse the language, Mickey Mouse reasoning that I've seen very often, like just because the crime is serious, the Defendant's not going to come to court. That's a bunch of BS, speaking in everyday language, which we should all speak in.

My reason for this is not that he's going to take off and run because I have no basis to conclude that.

I am basing this solely on the decision that I cannot think of anything that will reasonably protect the community at this time, and that's why I encourage you to speak to the house arrest officials.

Florida Law and Rules Concerning Pretrial Release

Rule 3.131. Pretrial Release

(a) Right to Pretrial Release. Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of judicial process, the accused may be detained.

Fla. St. §907.041 (4)(a) As used in this subsection, "dangerous crime" means any of the following:

1.Arson;

2.Aggravated assault;

3.Aggravated battery;

4.Illegal use of explosives;

5.Child abuse or aggravated child abuse;

6.Abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult;

7.Hijacking;

8.Kidnapping;

9.Homicide;

10.Manslaughter;

11.Sexual battery;

12.Robbery;

13.Carjacking;

14.Lewd, lascivious, or indecent assault or act upon or in the presence of a child under the age of 16 years;

15.Sexual activity with a child,

who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority;

16.Burglary of a dwelling;

17.Stalking and aggravated stalking;

18.Act of domestic violence as defined in s. 741.28; and

19.Attempting or conspiring to commit any such crime; and home invasion robbery.

(b) The court may order pretrial detention if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria in s. 903.046, and any other relevent facts, that:

.....

4.The defendant poses the threat of harm to the community. The court may so conclude if it finds that the defendant is presently charged with a dangerous crime, that there

is a substantial probability that the defendant committed such crime, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons. In addition the court must find that at least one of the following conditions is present:

a. The defendant has previously been convicted of a crime punishable by death or life imprisonment.

b. The defendant has been convicted of a dangerous crime within the 10 years immediately preceding the date of his arrest for the crime presently charged.

c. The defendant is on probation, parole, or other release pending

completion of sentence or on pretrial release for a dangerous crime at the time of the current arrest.